

## Environmental Protection Agency

## § 35.940-2

bear the burden of proof in the protest proceedings.

(2) In the proceedings under paragraph (e) of this section—

(i) If the grantee proposes to award a formally advertised, competitively bid, fixed-price contract to a bidder other than the bidder which submitted the apparent lowest price, the grantee will bear the burden of proving that its determination concerning responsiveness is in accordance with this subchapter; and

(ii) If the basis for the grantee's determination is a finding of non-responsibility, the grantee must establish and substantiate the basis for its determination and must adequately establish that such determination has been made in good faith. coverage) as is required by State or local law or the grantee or as is customary and appropriate. Under the Flood Disaster Protection Act of 1973, a contractor must purchase flood insurance to cover his risk of loss if the grantee has not purchased the insurance (see § 30.405-10 of this subchapter).

### § 35.940 Determination of allowable costs.

The grantee will be paid, upon request in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.705 of this chapter, this subpart, and the grant agreement.

#### § 35.940-1 Allowable project costs.

Allowable costs include:

(a) Costs of salaries, benefits, and expendable material the grantee incurs for the project, except as provided in § 35.940-2(g);

(b) Costs under construction contracts;

(c) Professional and consultant services;

(d) Facilities planning directly related to the treatment works;

(e) Sewer system evaluation (§ 35.927);

(f) Project feasibility and engineering reports;

(g) Costs required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42

U.S.C. 4621 *et seq.*, 4651 *et seq.*), and part 4 of this chapter;

(h) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings;

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents;

(j) Landscaping;

(k) Removal and relocation or replacement of utilities, for which the grantee is legally obligated to pay;

(l) Materials acquired, consumed, or expended specifically for the project;

(m) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;

(n) Development and preparation of an operation and maintenance manual;

(o) A plan of operation, in accordance with guidance issued by the Administrator;

(p) Start-up services for new treatment works, in accordance with guidance issued by the Administrator;

(q) Project identification signs (§ 30.625-3 of this chapter);

(r) Development of a municipal pretreatment program approvable under part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program;

(s) Costs of complying with the procurement requirements of these regulations (see § 35.936-20).

(t) Reasonable costs of public participation incurred by grantees which are identified in a public participation work plan, or which are otherwise approved by EPA, shall be allowable.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10304, Feb. 16, 1979]

#### § 35.940-2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction before a contractual completion date;

(c) Personal injury compensation or damages arising out of the project,